

THE DIRECTOR OF CENTRAL INTELLIGENCE

WASHINGTON, D. C. 20505

OLC 78-0487/b
OLC OMB LSH

Office of Legislative Counsel

20 March 1978

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

We have devoted considerable time in recent weeks to the Civil Service Reform legislation introduced in both Houses of Congress earlier this month (S. 2640 and H.R. 11280). Based on our report on the draft bill, submitted to the Office of Management and Budget on 17 February 1978, and subsequently transmitted to the Civil Service Commission, it was agreed that the Central Intelligence Agency should be exempted from all pertinent titles of the bill. We received assurances that this was intended and that the bill would be amended to reflect this before it was introduced. I would like to express our appreciation on your office's support.

On careful reading of the bill as introduced, however, it appears that the Agency's exemption from the bill is not as comprehensive as necessary or as intended. I would like to mention briefly our concerns.

In Title I, the CIA and other intelligence entities are exempt from only proposed section 2301 (section 101(a) of S. 2420, which would amend Title 5 United States Code), the Merit System Principles, and not from the other two sections. As noted in our report of 17 February 1978, it is necessary that this Agency be exempt from all of Title I. Our need for an exemption is based on the nature of intelligence operations and the need to maintain secrecy. The Agency's unique personnel system requires flexibility, and the oversight procedures as proposed in Title I would conflict with the current statutes which we believe was not intended. Furthermore, exemption from all of Title I is necessary to establish any exemption from the provisions referring to the Special Counsel in Title II.

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In Title II, the CIA is exempted from Chapter 43, Performance Appraisal, and from subchapter I of Chapter 75 relating to short-term suspension (sections 203(a) and 204(a) of S. 2420, respectively, which would amend Title 5 United States Code). The Agency, however, is not exempt from subchapter II, Removal of Suspension, for more than 30 days (sections 7511-7514) as it affects preference eligibles in an Executive agency in the excepted service, which would include the CIA. These provisions of subchapter II would conflict with the Director's termination authority (50 U.S.C. 403(c)) and with the Director's mandate to prevent disclosure of sources and methods (50 U.S.C. 403(d)(3) and 403g). Similar conflicts are presented by Chapter 77, Appeals (section 205 of S. 2420), which, in addition, conflicts with the Agency's statutory exemption from the competitive service (50 U.S.C. 403j).

Also, in Title II, the Agency is not exempted from proposed Chapter 12 (section 202(a) of S. 2420, which would amend Title 5 United States Code); we are particularly concerned with those provisions relating to the Special Counsel (sections 1201 to 1207). As noted in our 17 February report, the authority of the Special Counsel would conflict with the oversight role of the Intelligence Oversight Board (IOB) as stated in Section 3-1 of Executive Order 12036. Furthermore, the procedures for implementing the Special Counsel's authorities (sections 1206 and 1207) would conflict with the Director's statutory authorities cited above, with the role of the IOB, and with CIA's excepted personnel system.

Moreover, CIA is not exempted from Title V which concerns Merit Pay. This title would result in OPM control and regulations which would raise statutory conflicts as noted above.

Regarding Title IV, the language which apparently is intended to exempt the CIA is not drawn as clearly as we believe necessary; the corresponding language in Title VI presents similar concern. In our view, every effort should be made to provide the clearest provisions possible concerning the scope of this important legislation.

Many of these concerns probably could be resolved by relatively minor adjustments to the language in the bill. I believe that it would be worthwhile for our staffs to meet on this matter, along with officers from the Civil Service Commission, to resolve these drafting problems.

Sincerely,

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Acting Legislative Counsel

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